

1 UNITED STATES DISTRICT COURT
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DISTRICT OF NEVADA

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4 JEFFREY CHARLES MYERS,

Case No. 3:24-CV-00299-CLB

5 v. Plaintiffs,

**ORDER GRANTING MOTION FOR
RELIEF UNDER FRCP 60(b)**6 MARTIN O'MALLEY, Commissioner of
7 Social Security,

[ECF No. 9]

8 Defendant.

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10 On July 9, 2024, Plaintiff Jeffrey Myers ("Plaintiff") filed a complaint for review of
11 the final decision of the Commissioner of Social Security denying his claim for disability
12 benefits under Title II of the Social Security Act. (ECF No. 1.) Plaintiff also filed an *in*
13 *forma pauperis* ("IFP") application to proceed with his case without paying the filing fee.
14 (ECF No. 1.) On July 10, 2024, the Court issued an order denying the IFP application.
15 (ECF No. 5.) The Court ordered Plaintiff to either file a renewed IFP application
16 demonstrating why he is entitled to IFP status or to pay the filing fee of \$405.00 by no
17 later than August 9, 2024. (*Id.*) Plaintiff was cautioned that his failure to timely follow the
18 Court's order would result in dismissal of the case without prejudice. (*Id.*) On August 12,
19 2024, the Court issued an order dismissing the case without prejudice because Plaintiff
20 had neither paid the filing fee nor filed a renewed IFP motion, (ECF No. 7), and judgment
21 was entered accordingly, (ECF No. 8). On August 14, 2024, Plaintiff filed a motion for
22 relief from judgment, asking that the Court set aside judgment, reopen the case, and
23 allow Plaintiff to pay the filing fee. (ECF No. 9.)

24 Rule 60(b)(1) allows a court to "relieve a party or its legal representative from a
25 final judgment, order, or proceeding" based on "mistake, inadvertence, surprise, or
26 excusable neglect." Fed. R. Civ. P. 60(b)(1). To determine whether neglect is excusable,
27 the Court considers "at least four factors" known as the *Pioneer-Briones* factors: "(1) the
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1 danger of prejudice to the opposing party; (2) the length of the delay and its potential
2 impact on the proceedings; (3) the reason for the delay; and (4) whether the movant
3 acted in good faith." *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009)
4 (quoting *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223 (9th Cir. 2000)).

5 Here, Plaintiff's counsel represents that Plaintiff failed to timely comply with the
6 Court's order due to mistake, inadvertence or excusable neglect of his attorney—
7 specifically that Plaintiff's counsel inadvertently did not calendar the deadline. (ECF No.
8 9 at 5-6.) Thus, Plaintiff requests that judgment be set aside, and Plaintiff be allowed to
9 pay his filing fee within 48 hours of the granting of this motion. (*Id.* at 5.) Having reviewed
10 the motion and considering the above, the Court finds that the *Pioneer-Briones* factors
11 weigh in favor of finding excusable neglect to set aside the dismissal order.

12 Accordingly, **IT IS ORDERED** that Plaintiff's motion for relief, (ECF No. 9), is
13 **GRANTED**.

14 **IT IS FURTHER ORDERED** that the Court's August 12, 2024 Order dismissing
15 this case without prejudice, (ECF No. 7), and the Judgment, (ECF No. 8), are **SET**
16 **ASIDE and VACATED**.

17 **IT IS FURTHER ORDERED** that the Clerk of Court is directed to **REOPEN** this
18 case.

19 **IT IS FURTHER ORDERED** that Plaintiff shall have until **Monday, August 19,**
20 **2024**, to pay his filing fee.

21 **IT IS SO ORDERED.**

22 **DATE:** August 15, 2024.

23 
24 **UNITED STATES MAGISTRATE JUDGE**